

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In re the Parentage of M.R.A.,

MICHAEL W. ALDRIDGE,

Appellant,

v.

CAROLYN KAYE BIDDLE fka Aldridge and  
FORREST JAMES NEWMAN,

Respondents.

No. 37176-6-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — On December 5, 2007, the Thurston County Superior Court dismissed, for lack of a filing fee, one of Michael W. Aldridge's petitions to extend the statute of limitations to enforce the second of three judgments. The dismissed judgment was entered against Aldridge's former wife, Carolyn Biddle, and her new husband, Forrest Newman.

Aldridge appeals, but provides only an inadequate and contradictory record, which does not include a report of proceedings in any form. *See* RAP 9.1.<sup>1</sup> In addition, the original judgments have not been made part of the record on appeal.<sup>2</sup>

Although Aldridge would not be required to pay a separate filing fee to extend the judgment for attorney fees and costs associated with his original judgment, the record provided to us suggests that Aldridge failed to pay the filing fee associated with the original judgment. The partial record provided sufficiently reveals that, even after being notified by the clerk's office that he was required to pay the filing fee in order to perfect his petition to extend the judgment, Aldridge decided not to pay the filing fee required. Thus, the trial court properly dismissed the second judgment<sup>3</sup> for failure to pay the required filing fee, and we affirm.

#### FACTS

We glean the following facts from the unchallenged facts in Aldridge's post-hearing brief.

Aldridge and Biddle were married on March 17, 1978. They dissolved their marriage in 1988. During the marriage, Carolyn bore two children. In 1995, Aldridge learned that Newman

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<sup>1</sup> RAP 9.1(a) states: "The 'record on review' may consist of (1) a 'report of proceedings', (2) 'clerk's papers', (3) exhibits, and (4) a certified record of administrative adjudicative proceedings."

<sup>2</sup> The abstracts of those judgments do appear in our record. They have numerous cross-outs and different numbers written on them, apparently placed on these abstracts by the clerk's office.

<sup>3</sup> We note that Newman did not seek to dismiss the third judgment, which was against him only. The record does not indicate whether this judgment was dismissed or extended.

(Biddle's new husband) was the second child's biological father. On February 6, 1996,<sup>4</sup> Aldridge disestablished his paternity for this second child and was also granted some form of additional relief. The trial court reserved the judgment summary for later determination. On April 25, 1997, the trial court amended the original judgment, entering the judgment summary against Newman and Biddle. On July 3, 1997, the trial court entered a second amended judgment against Biddle and Newman. This second amended judgment established a \$14,742 judgment, plus interest, against Biddle and Newman. Also on July 3, 1997, the trial court entered a judgment denying Newman's motion for reconsideration. As a result of this judgment and order, the trial court ordered Newman to pay Aldridge \$2,681 in attorney fees and \$129.83 in costs.

Aldridge tried unsuccessfully for several years to enforce the judgments. Days before the judgments were to expire, Aldridge filed separate petitions to extend the time for enforcing each judgment. On September 21, 2006, Aldridge filed a petition to extend judgment for the

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<sup>4</sup> There is some confusion in the record with respect to when Aldridge disestablished his paternity as to Biddle's second child. In his trial brief and his brief on appeal, Aldridge indicates that he disestablished paternity in 1997. But in order for the initial judgment against Newman to have occurred in September 1996, the disestablishment proceedings necessarily needed to take place prior to September 1996. Because the record does not contain any of the original judgments, we presume, for purposes of this appeal, that the disestablishment proceedings actually took place in February 1996.

September 25, 1996 judgment against Newman.<sup>5</sup> At the same time he filed the petition, Aldridge paid a filing fee of \$220 as required by RCW 6.17.020(3).<sup>6</sup>

Initially, the Thurston County Clerk's office informed Aldridge that the \$220 filing fee he paid for the September judgment was sufficient to cover his subsequent petitions to extend the two judgments remaining. But sometime before July 2, 2007, one of the financial managers for the Thurston County Superior Court contacted Aldridge and told him that he would need to pay separate filing fees in support of his April 17, 2007 petition to extend the April 25, 1997 judgment against Biddle and Newman and the June 13, 2007 petition to extend the July 3, 1997 judgment against Newman. Aldridge did not pay the \$200<sup>7</sup> filing fee for the second or third petitions and argued to the trial court that the matter should proceed because the clerk had accepted his petition without requiring a filing fee.

Biddle moved to dismiss the second petition to extend the April 25, 1997 judgment against her and Newman. No motion was made regarding the July 3 judgment against Newman.

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<sup>5</sup> It is unclear what judgment was ordered on September 25, 1996; according to Biddle's post-hearing brief, it was a judgment in the amount of \$1,237.20 against Newman. The abstracts that list all three of these judgments list a judgment occurring on September 25, 1996, but the date and associated judgment are crossed out by hand. With the record we have been provided, it seems likely that the trial court entered the judgment summary that it has previously reserved on this date.

<sup>6</sup> RCW 6.17.020(3) states in relevant part:

[A] party in whose favor a judgment has been filed . . . may, within ninety days before the expiration of the original ten-year period, apply to the [trial] court that rendered the judgment . . . for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. . . . The petitioner shall pay to the court a filing fee equal to the filing fee for the first or initial paper in a civil action in the superior court.

<sup>7</sup> The filing fee for the petition was \$200. The additional \$20 he paid when he petitioned to extend the first judgment was a surcharge fee for an unnamed Thurston County program.

As a result of Biddle's motion, the trial court invited the parties to brief the issue of whether

a filing fee was required from Mr. Aldridge at the time the petition to extend [the April 25, 1997] judgment was filed, whether Mr. Aldridge has paid a filing fee to extend [the April 25, 1997] judgment, whether the filing fee must be paid before the expiration of the underlying [April 25, 1997] judgment, [and] whether that is a deficiency that may be corrected at this point.

Clerk's Papers at 11. The trial court dismissed the April 17, 2007 extension petition for the April 25, 1997 judgment against Biddle for want of a filing fee. Aldridge timely appeals.

### ANALYSIS

Aldridge argues that the trial court erred when it dismissed his petition to extend the April 25, 1997 judgment against Biddle because (1) he paid a filing fee for the September 25, 1996 judgment against Newman and, as a result, was not required to pay an additional filing fee; or (2) if a filing fee was required, he effected filing when the clerk mistakenly accepted his petition; or (3) if a filing fee was required, he should be permitted to correct that defect by paying the additional fees upon disposition of this appeal.<sup>8</sup>

We review questions of law, including statutory construction, *de novo*. *City of Pasco v. Pub. Employment Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992). Absent a contrary legislative intent, we construe statutory language according to its plain and ordinary meaning "even when [the] results may seem unduly harsh." *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993); *see Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). When a statute is ambiguous, we will resort to principles of

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<sup>8</sup> Aldridge also argues we should take into account that Biddle "concealed" herself during the life of the judgment, as evidenced by the fact that she changed her name without informing Aldridge. But this issue has no bearing on whether Aldridge's failure to pay the required filing fee is fatal and, thus, we need not reach this issue. Moreover, the record does not contain any information regarding Biddle's alleged concealment, other than Aldridge's blanket statements in his trial brief.

statutory construction, legislative history, and relevant case law to assist in interpretation. *Yousoufian v. Office of King County Executive*, 152 Wn.2d 421, 434, 98 P.3d 463 (2004) (quoting *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002)). A statute is ambiguous if we can reasonably interpret it in more than one way. *Yousoufian*, 152 Wn.2d at 433-34 (quoting *Vashon Island Comm. for Self-Gov't v. Washington State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995)).

This appeal requires that we determine whether, under RCW 6.17.020(3), paying one filing fee for the first judgment against Newman was sufficient to perfect the filing of Aldridge's subsequent petitions to extend all judgments against all debtors.

RCW 6.17.020(3) provides:<sup>9</sup>

[A] party in whose favor a judgment has been filed . . . may, within ninety days before the expiration of the original ten-year period, apply to the [trial] court that rendered the judgment . . . for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. . . . The petitioner shall pay to the court a filing fee equal to the filing fee for the first or initial paper in a civil action in the court.

Under RCW 6.17.020(3), the trial court may extend the statute of limitations on an existing judgment, provided that the petitioner, here Aldridge, (1) file a petition to extend judgment within 90 days of the expiration of judgment and (2) pay a filing fee equal to the filing fee for the first or initial paper in a civil action, which is \$200. RCW 6.17.020(3); RCW 36.18.020(2); *State v. Morgan*, 107 Wn. App. 153, 158, 26 P.3d 965 (2001), *review denied*, 145 Wn.2d 1024 (2002).

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<sup>9</sup> In 2002, the legislature amended RCW 6.17.020 to allow assignees to extend judgments and for that authority to apply retroactively to 1994. In *American Discount Corp. v. Shepherd*, 160 Wn.2d 93, 98-99, 156 P.3d 858 (2007), our Supreme Court held that, despite express legislative intent, RCW 6.17.020 could not apply retroactively to revive an expired judgment because such retroactive application directly affects the substantive rights of the debtor.

And a document is not “filed” for recording into the official public record of the clerk of the court’s office until the filing fee is paid; the clerk has no discretion or authority to accept documents for filing without the filing fee. *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 246, 963 P.2d 907 (1998) (citing RCW 36.18.005; RCW 36.18.020; RCW 36.18.060)).

Here, when the clerk of the court mistakenly accepted Aldridge’s petition to extend the April 25, 1997 judgment, it was not in fact “filed” as required by RCW 6.17.020(3) because he did not tender the necessary filing fee. Moreover, despite Aldridge’s argument to the contrary, from the incomplete and inconsistent record presented, the September 25, 1996 and April 25, 1997 judgments appear to be two separate and distinct judgments each entered on separate dates against different debtors. The first is against Newman (\$1,237.20) and the second against Biddle and Newman for \$14,742. And these judgments did not collapse into a single judgment simply because they arose out of the same case; Aldridge had to file separate petitions to extend each individual judgment.<sup>10</sup> Because of the separate nature of these judgments, Aldridge was not relieved of his statutory obligation to pay a filing fee for each petition to extend *each* of these distinct judgments. Thus, the filing fee Aldridge paid to extend the September 25, 1996 judgment is effective only for that judgment.

Next, Aldridge relies on *In re Estate of Crane*, 15 Wn. App. 161, 548 P.2d 585 (1976), to support his argument that if this court finds that a separate filing fee was required for the April 25, 1997 judgment, he effected filing when the clerk of the court mistakenly accepted his petition without the requisite fee. Aldridge’s reliance is misplaced. In *Crane*, this court considered

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<sup>10</sup> To be timely, a petition to extend a judgment must be filed within 90 days of the expiration date of the respective judgment. RCW 6.17.020(3).

whether timely payment of the superior court clerk's filing fee was a jurisdictional requirement in order to contest a will. 15 Wn. App. at 161. After the decedent's will was admitted into probate, the plaintiff filed a petition to revoke the will. *Crane*, 15 Wn. App. at 161. The county clerk mistakenly accepted and filed the petition, even though the plaintiff had failed to pay the required filing fee under former RCW 36.18.020(12) (1975). *Crane*, 15 Wn. App. at 161-62. The executor moved to dismiss the will contest based on the petitioner's failure to file the required filing fee. *Crane*, 15 Wn. App. at 162.

The jurisdiction of a will contest is governed by RCW 11.24.010, which states that an individual who is interested in a will

shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall *file* a petition containing his or her objections and exceptions to said will, or to the rejection thereof.

RCW 11.24.010 (emphasis added). We found that RCW 11.24.010 simply requires the petitioning party to file a petition; it did not expressly require payment of a filing fee. *Crane*, 15 Wn. App. at 163. But when we read RCW 36.18.060,<sup>11</sup> it was clear that the clerk's office should have collected a filing fee when the plaintiff sought to file the petition. *Crane*, 15 Wn. App. at 162. Ultimately, we held that the will contest could be heard despite the fact that the filing fee was not timely paid because "RCW 11.24.010 makes the act of [f]iling the prerequisite to

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<sup>11</sup> RCW 36.18.060 states:

The officers mentioned in this chapter . . . shall not, in any case, except for the state or county, perform any official services unless the fees prescribed therefor are paid in advance, and on such payment the officer must perform the services required. The county sheriff may allow payment to be made after official services have been performed as the sheriff deems appropriate. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.



jurisdiction, but neither it nor [former] RCW 36.18.020(12) expressly refers to the payment of the fee as a jurisdictional requirement.” *Crane*, 15 Wn. App. at 164-65.

But here, unlike *Crane*, RCW 6.17.020 *expressly* requires that Aldridge pay a filing fee with *each* petition to extend judgment. The petition and the filing fee are inextricably linked as prerequisites for filing a petition to extend judgment; under the terms of RCW 6.17.020, the payment of a filing fee is required before the court has the petition before it and can exercise its authority to hear the matter and before the court has jurisdiction to extend its earlier judgment before it expires. As a result, despite the fact that the clerk mistakenly accepted the filing, Aldridge’s petition to extend the April 25, 1997 judgment was not properly perfected and was ineffective to extend the judgment as to Biddle.

Moreover, although Aldridge may have initially relied on statements by the clerk of the court that an additional filing fee was not required when he sought to extend the April 25, 1997 judgment, an individual from the clerk’s office contacted Aldridge, informed him of the error, and notified him that he was required to pay the filing fee to perfect his petition. But despite having the deficiency called to his attention, Aldridge failed to remedy it. Accordingly, because Aldridge failed to pay the mandated filing fee and failed to cure this defect when notified by the clerk’s office, the judgment expired and the trial court did not have the authority to extend it. *See* RCW 6.17.020; *see also Am. Disc. Corp.*, 160 Wn.2d 93 (an expired judgment cannot be revived because such a revival affects the substantive rights of the debtor). Accordingly, the trial court properly dismissed the extension of the April 25, 1997 judgment as to Biddle as untimely.

#### Attorney Fees

Biddle requests attorney fees under RCW 26.09.140 and RAP 14.1. Under RCW

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26.09.140, we may, in our discretion, order a party to pay “for the cost to the other party of maintaining the appeal and attorney[] fees in addition to statutory costs.” Under the unique facts of this case, we exercise our discretion and decline to award attorney fees.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, J.

I concur:

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BRIDGEWATER, J.

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Penoyar, A.C.J. (concurrency) — The clerk's office mistakenly accepted Aldridge's petition without the mandated filing fee. However, the clerk's office later informed Aldridge of the mistake and he failed to pay the required fee. While the error may have tolled the expiration of the judgments, tolling would last only a reasonable time to allow Aldridge to pay the fee. I would affirm on this basis alone.

Penoyar, A.C.J.